

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CRIMINAL NO.
)	
MONTE J. CASTELLANO,)	
)	
Defendant.)	

DEFENDANT'S AGREEMENT TO PLEAD GUILTY

The attorney for the Government and the attorney for the Defendant have engaged in discussions and have reached an agreement pursuant to Federal Rule of Criminal Procedure 11. As a result of that agreement, the Defendant intends to plead guilty in this case. The full and complete Plea Agreement is as follows:

I.

1. Defendant will cooperate fully with the United States. Defendant agrees and acknowledges that his obligation to cooperate requires him to provide complete and truthful testimony under penalty of perjury before any Grand Jury or in any trial proceeding. Furthermore, the Defendant understands that this agreement requires him to testify concerning all criminal activity about which he knows, whether or not Defendant was himself involved.

2. Defendant also agrees and acknowledges that his obligation to cooperate requires him, upon request, to provide complete and truthful information to any Federal or State law enforcement

agencies concerning any criminal activity about which he knows. Defendant agrees that any such information he provides law enforcement agencies will be complete and truthful.

3. Besides the foregoing, the Defendant will do all things deemed necessary by the United States Attorney and/or any law enforcement agents to assist law enforcement personnel in their investigations into activities in which the Defendant is involved or about which he knows.

4. Defendant further agrees that his obligation to cooperate includes providing information concerning his knowledge of criminal activity in the Southern District of Illinois, and elsewhere, including but not limited to all federal districts.

5. The Defendant and the Government both agree that, pursuant to the United States Sentencing Commission *Guidelines Manual*, § 1B1.8 [hereinafter "U.S.S.G."], information that the Defendant provides pursuant to his obligation to cooperate fully under the terms of this agreement shall not be used in determining Defendant's applicable guideline range.

6. The United States will inform the Court of the extent of his voluntary cooperation; however, Defendant understands that the Court did not participate in this agreement, is not bound by any recommendations of the Government, and further, that he will not be allowed to withdraw his plea of guilty, once entered.

7. Defendant will not be prosecuted in the Southern District of Illinois for any other crimes now known to the Government, or to become known to the Government by virtue of Defendant's cooperation.

8. In conjunction with the provisions of paragraphs 1, 2, 3, and 4, hereinabove, Defendant specifically agrees and acknowledges that if he does not cooperate fully or does not testify truthfully before the Grand Jury or at any trial in any federal district where he is called by the United

States as a witness, then the United States is completely released from any obligation arising from this agreement and the Defendant is subject to full prosecution and punishment for any crime known to the United States Attorney's Office for the Southern District of Illinois at this time. It is further understood that no action taken by the Government, pursuant to this paragraph, shall be grounds for the Defendant to withdraw his plea.

9. Defendant acknowledges that he has been advised of and does fully understand the following:

(a) the nature of the charges to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law; and

(b) that he has the right to plead not guilty or to persist in that plea if it has already been made, and he has the right to be tried by a jury and at that trial has the right to the assistance of counsel, the right to confront and cross-examine witnesses against him, and the right not to be compelled to incriminate himself; and

(c) that if he pleads guilty, there will not be a further trial of any kind, so that by pleading guilty, he waives the right to a trial; and

(d) that if he pleads guilty, the Court may ask him questions about the offense to which he has pleaded, and if he answers these questions under oath, on the record, and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or false statement; and

(e) that if he pleads guilty, he will waive his right to persist in his plea of not guilty, to be tried by a jury, to have assistance of counsel at the trial, and to confront and cross-examine witnesses against him at trial; and

(f) that if he pleads, he is pleading guilty to a felony punishable by a term of imprisonment exceeding one year. Therefore, no matter what sentence the Court imposes (whether probation or any term of imprisonment), he will be forbidden by federal firearms laws from possessing any type of firearm in his lifetime, unless he obtains relief pursuant to 18 U.S.C. § 925, or other appropriate federal statute.

10. It is further understood that this agreement is limited to the Southern District of Illinois, and nothing herein is intended to bind other federal, state or local prosecuting authorities. It is further understood that this Agreement to Plead Guilty does not prohibit the United States, any agency thereof, or any third party from initiating or prosecuting any civil proceedings directly or indirectly involving the Defendant.

11. Defendant understands that this offense is subject to provisions and guidelines of the "Sentencing Reform Act of 1984" (Ch. II of the Comprehensive Crime Control Act of 1984, Title 28, United States Code, Section 994(a)).

12. Defendant understands that pursuant to Title 18, United States Code, Section 3013, as amended by Act of April 24, 1996, the Court will assess a "Special Assessment" of \$100 per felony count (for offenses committed on or after April 24, 1996). Defendant understands that he will be ordered to pay the full amount of the special assessment prior to or at the time of sentencing.

13. Defendant understands that the Court must impose a term of "supervised release" to follow incarceration. *See* 18 U.S.C. § 3583; U.S.S.G. § 5D1.1.

14. Defendant understands that the Court may impose a fine, costs of incarceration, and costs of supervision. The estimated costs of imprisonment presently are \$1,910.17 per month. The estimated costs of supervision presently are \$217.18 per month.

15. The Defendant understands that if he is released pending sentencing or surrender to the Bureau of Prisons and commits any offense in violation of federal, state, or local law while on release in this case or violates any other conditions of release, the Government may request revocation of the Defendant's bond and forfeiture of any bail and may file additional charges or sentencing enhancement notices, in addition to any sanctions that may be imposed for violation of

the Court's order setting the conditions of release. No action taken or recommendation made by the Government pursuant to this paragraph shall be grounds for the Defendant to withdraw his plea.

16. The Defendant understands that the Government may move for an order pursuant to 18 U.S.C. § 6003 requiring the Defendant to give testimony or provide other information and that if such order is granted and the Defendant refuses to give such testimony or other information he may be subject to punishment for contempt.

17. The Defendant states that he has read this agreement and has discussed it with his attorney, and understands it.

II.

18. The Defendant will enter a plea of guilty to the information, charging Defendant with Wire Fraud, in violation of Title 18, United States Code, Sections 1343, and 2. The maximum penalties that can be imposed are a term of imprisonment of up to 5 years, a fine of not more than \$250,000.00, or both, and a term of supervised release of at least 2 years but no more than 3 years.

19. The Government and Defendant agree that it appears that under the Sentencing Guidelines, after all factors have been considered, Defendant will have a Total Offense Level of 21 and a Criminal History Category of I (0 criminal history points), where the sentencing range is 37 to 46 months, and that it appears that the Defendant's fine range is \$6,000.00 to \$60,000.00 according to U.S.S.G. Section 5E1.2.

20. The Government and Defendant agree that United States Sentencing Guideline ("U.S.S.G.") Section 2F1.1 is the most applicable to the statute of conviction, and that the Base Offense Level is 6. The Government and Defendant further agree that the specific offense characteristics of U.S.S.G. Section 2F1.1(b)(N) will apply, thus Defendant's Base Offense Level will

be increased 13 levels, creating a adjusted Base Offense Level of 19. It is further agreed by the Government and Defendant that the specific offense characteristics of U.S.S.G. Section 2F1.1(b)(2) will apply because the Defendant's offense conduct involved more than minimal planning, thus Defendant's adjusted Base Offense Level will be increased 2 levels to a adjusted Base Offense Level of 21. Further, it is the Government's position that the specific offense characteristics of U.S.S.G. Section 2F1.1(b)(8)(B) will apply, thus Defendant's adjusted Base Offense Level will be increased to a adjusted Base Offense Level of 24.

21. Defendant and the Government agree that it appears that no victim-related adjustments contained within U.S.S.G. Section 3A1.1(b)(2) will apply.

22. The Government and Defendant agree that it appears that the Defendant's role in the offense will be neither increased (under 3B1.1) nor decreased (under 3B1.2).

23. The Government and Defendant agree that it appears that there will be no finding that Defendant has obstructed justice in this case and therefore, pursuant to U.S.S.G. § 3C1.1, the Defendant's base offense level will not be increased.

24. The Government and Defendant agree that it appears that Defendant has voluntarily demonstrated a recognition and affirmative acceptance of personal responsibility for this criminal conduct, and the Defendant may be entitled to a reduction of 3 Levels based upon a finding by the Court that the Defendant has demonstrated an acceptance of personal responsibility for his criminal conduct which would thereby reduce the adjusted Base Offense Level to 21 from Offense Level 24. *See* U.S.S.G. § 3E1.1.

25. The Government and the Defendant also agree that the provisions contained within paragraphs 20 through 24 concerning the application of the Sentencing Guidelines are not binding

on the Court and that the Court ultimately will determine the guideline range after receiving the Presentence Report and giving both parties the opportunity to comment thereon. The Defendant expressly recognizes that, regardless of the guideline range found by the Court, he will not be permitted to withdraw his plea. The Government specifically reserves the right to argue for, present testimony, or otherwise support the Probation Office's or the Court's findings as to Offense Level and Criminal History Category (which may be in excess of the calculations set forth herein).

26. The Defendant understands that the Government will recommend the imposition of a fine. The Defendant understands that the Government's recommendation may be based in part on the Defendant's projected earnings through the Inmate Financial Responsibility Program.

27. Defendant and the Government agree that based upon substantial assistance rendered through the complete and total cooperation of Defendant, the Government may, in the sole discretion of the United States Attorney, file either a Motion under Section 5K1.1 of the Sentencing Guidelines or a Motion under Rule 35 of the Federal Rules of Criminal Procedure advising the Court of a recommended reduction in sentence. The Motion, if any, will only be filed if the assistance rendered by the Defendant is found to be complete and thoroughly truthful, regardless of the outcome of any trial or hearing at which the Defendant may testify. However, the Defendant has been informed that, in general, the United States Attorney will recommend no more than one-third off of the lowest end of the Sentencing Guideline range ultimately determined by the Court. The Defendant understands that any reduction of sentence, and the extent of that reduction, lies in the sole discretion of the Court.

28. The Defendant is aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging all this, the Defendant

knowingly waives the right to appeal any sentence within the maximum provided in the statute of conviction (or the manner in which that sentence was determined), including any order of restitution, on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatever, in exchange for the concessions made by the United States in this plea agreement. The Defendant also waives his right to challenge his sentence or the manner in which it was determined, including any order of restitution, in any collateral attack, including but not limited to a motion brought under Title 28, United States Code, Section 2255.

29. Defendant agrees that this Plea Agreement and Stipulation of Facts constitutes the entire agreement between him and the United States and that no promises, inducements or representations, other than those specifically set forth in this Plea Agreement, were made to induce him to enter into this Plea Agreement.

W. CHARLES GRACE
United States Attorney

MONTE J. CASTELLANO
Defendant

HAL GOLDSMITH
Assistant United States Attorney

JOHN O’GARA
Attorney for Defendant

Date: _____

Date: _____